(Testimony of Gabriel Garfias.)

words, Pier No. 4 in Oakland Outer Harbor, when ships are being loaded, is a very busy place, isn't it?

A. Yes, it was. [2005]

Q. And there were a lot of men working there?

A. That is right.

Q. And those men consisted of men employed by the steamship companies?

A. Yes, and also by the Army.

Q. By the Army and by the stevedore companies? A. That is right.

Q. Can you give us any idea of the normal number of men who would be down on that pier working on the pier on a normal day where two or three ships were being loaded?

A. Well, I would say about two hundred men, two hundred and fifty.

Q. On the occasion of the receipt of these goods —you have a counterpart; I have a photostatic copy here—you have received certain packages from the firm of Nye & Nissen?

A. That is right.

Q. It was your privilege, if you desired to do it, to open those packages, was it not?

A. No, that was up to the port steward.

Q. The port steward.

A. The port steward.

Q. Was he present when the goods were delivered? A. I don't recall that.

Q. Well, at any time on the pier the company that you worked for had men there available to

(Testimony of Gabriel Garfias.)

open, if they wished, any package received to go aboard that vessel, isn't that correct?

A. That is right. [2006]

Q. On this occasion were you present at any time when anybody opened any of those packages?

A. I didn't understand your question.

Q. On the tenth of May—I think that is the date that you wrote down—— A. That is right.

Q. On that day were you present when anybody opened any of those packages? A. No sir.

Q. Were the packages under your observation the entire time? A. No sir.

Q. In other words, goods were delivered on the pier at a certain time on the tenth of May and you signed that paper you have in your hand?

A. That is right.

Q. And then some time later your recollection is you saw some butter being loaded on the ship?

A. That is right.

Q. Am I correct in that?

A. That is right.

Q. Did you at any time see anyone weigh any of the merchandise? A. No sir.

Q. Open any of the boxes? A. No sir.

Q. Or make any tests in relation to it?

A. No sir.

Q. And you did not keep the merchandise under your eye all the time, did you?

A. Well, no, because I had other things to do in connection with that.

Mr. Faulkner: That is all. Thank you.

Mr. Houck: That is all. [2007]

CAPTAIN HENRIK E. SIEVERS
called on behalf of the Government; sworn

The Clerk: Q. Will you state your name, please? A. Henrik Sievers.

Q. You spell your first name H-e-n-r-i-k, do you not? A. That is right.

Q. Henrik E. Sievers, S-i-e-v-e-r-s?

A. Yes, sir.

Q. Captain Sievers, where do you live?

A. In Santa Cruz, California.

Q. And your business is here in San Francisco, is it not? A. Yes sir.

Q. What is your business?

A. I am a California District Representative for the Alaska Transportation Company.

Q. And the Alaska Transportation Company is a shipping company, is it not?

A. Yes sir.

Q. Do you know of the relation of that company to the War Shipping Administration?

A. Yes sir.

Q. Do you know of the general agency contract whereby the Alaska Transportation Company manages the steamship Gilbert Hitchcock and also the steamship James Oliver? A. Yes sir.

Q. Where is the home office of the Alaska Transportation Company?

A. Seattle, Washington.

Q. And you are its local representative in San Francisco, is that right?

A. In California. [2008]

Q. For the State of California?

(Testimony of Captain Henrik E. Sievers.)

A. That is right.

Q. Now, I show you a paper. I will ask you if you can identify that paper, Captain?

A. Yes, that is a purchase order made out for the stores on the Gilbert Hitchcock.

Q. And that was issued by one of the officers of your company, was it?

A. It was issued by our agents in San Francisco.

Q. And your agents in San Francisco are who?

A. Olympic Steamship Company.

Mr. Faulkner: What company?

Mr. Pratt: Olympic Steamship Company.

Q. And what are your relations to the Olympic Steamship Company, your particular functions as the California representative of the Alaska Transportation Company?

A. My job is to see that our agents do their job.

Q. In the management of the Gilbert Hitchcock and the James Oliver, the two steamships, what, if anything, did the Olympic Steamship Company have to do with that work?

A. They completely husbanded the ship while she was in here with stores.

Q. Under your supervision?

A. Under my supervision, yes, sir.

Q. Are you personally familiar with this steamship, the Gilbert Hitchcock? A. Yes sir.

Q. And are you personally familiar also with the steamship [2009] James Oliver?

A. Yes sir.

(Testimony of Captain Henrik E. Sievers.)

Q. Now, after purchase orders are issued such as these which you identified, these being issued to Nye & Nissen, both of them, what, if anything, do you have to do with the supervision of the transactions relating to the delivery of these food products to the boats?

A. It is my job to see that when the vessel leaves for sea she is in all manner seaworthy, fully stored, fully manned, and ready for whatever length voyage she is to make.

Q. After the products are delivered to your boat is an invoice then received from the concern that furnishes the supplies? A. That is right.

Q. I direct your attention now to this paper. I will ask you if you can identify it?

A. Yes, that is a typical invoice received for stores purchased. This was in the Gilbert Hitchcock.

Q. And does this paper come from the original records of your corporation kept in the ordinary course of business? A. Yes sir.

Q. What, if anything, did you have to do with this particular invoice?

A. That invoice was received in the San Francisco office under my supervision and was sent up to the home office for payment.

Q. To the home office where?

A. In Seattle.

Q. Did it first receive your okeh?

A. I look them over [2010] before they go up?

Q. You check, do you? A. Yes sir.

(Testimony of Captain Henrik E. Sievers.)

Mr. Pratt: This paper is offered in evidence, being an invoice of Nye & Nissen to the United States War Shipping Administration, Alaska Transportation Company, General Agents, covering 25 boxes of butter, 55 cases of eggs, Medium, Processed, AA, and other items of cheese, in an aggregate amount of $1,478.42. I offer it in evidence.

Mr. Faulkner: Your Honor, I would like to look at it. Your Honor has ruled this type out and permitted a counterpart, because there is so much writing that is not part of the record of Nye & Nissen. I would like to look at it, and I may not have any objection on that point. May I ask the witness a question?

Mr. Pratt: Yes.

Mr. Faulkner: Q. Captain, this paper, which is part of your file, when it came into your office or, rather, when it was received from the firm of Nye & Nissen—there is certain typewriting on there and there is a certificate signed by Trini Robley, a bookkeeper for Nye & Nissen, and then there is another rubber stamp about commissions, put on there in that fashion. Now, when the document came from Nye & Nissen, all that it had on was the two rubber stamps and the typewriting, isn't that right?

A. Yes sir. These other stamps were put on by our office. This stamp there the skipper signed. [2011]

(Testimony of Captain Henrik E. Sievers.)

Q. There is a certificate here signed by a man named Helmer. A. That is a woman.

Q. Excuse me. She was the purchasing agent?

A. Yes. That was signed in Seattle before that was passed to the accounting department for payment.

Q. Someone up there signed it, is that right?

A. Right. The signature on the bottom was signed by the captain of the ship before he sailed.

Q. In other words, the captain signed the certificate of the delivery of the goods on the ship in good condition; is that right? And that was done before it was passed up to Seattle by you?

A. That was probably done just at sailing time before he left.

Mr. Faulkner: Except the general objection, we haven't any objection because of the form of that particular paper, your Honor.

The Court: Let it be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 144.)

Mr. Faulkner: Exception to admitting it, your Honor.

Mr. Pratt: Q. I notice on this invoice also in pencil the signature E. A. Fischer, 5/1/44. Do you know what that is or who that is?

A. It looks to me as if it were the—I couldn't tell whose it is. It looks to me as if it was the receiving clerk on the [2012] dock or someone—either that or someone who is a member of the Nye & Nissen firm.

(Testimony of Captain Henrik E. Sievers.)

Mr. Pratt: This Exhibit 144 is another invoice from Nye & Nissen to the United States War Shipping Administration, Alaska Transportation Company, General Agents, describing a lot of food products, including 55 cases of eggs and 25 boxes of butter, the eggs being 41 cents a dozen, the butter 46¼ cents a pound; May 1, 1944, the amount of the bill is $1,478.42. It has a certificate at the bottom like others I have read to the Jury, signed by Nye & Nissen by Trini Robley, bookkeeper.

Q. Captain, I now hand you a cancelled check of the Alaska Transportation Company, General Agents, Special Account, dated Seattle, Washington, May 12, 1944, for $1,478.42, payable to Nye & Nissen, San Francisco, and endorsed by Nye & Nissen, and showing the cancellation perforation. Does that come from the regular record of your company? A. Yes sir.

Q. Is that the check by which this invoice, Exhibit 144, was paid by your company?

A. Yes sir.

Q. Do you know what funds were utilized for the payment of that bill as indicated by the check?

A. Yes sir.

Q. What funds?

A. Those came out of the General Agents Special Account.

Q. Funds furnished by whom?

A. By the United States Government. [2013]

Mr. Pratt: The check is offered in evidence.

Mr. Faulkner: Before your Honor rules, I

(Testimony of Captain Henrik F. Sievers.)

should like to ask this question:

Q. Did I understand you to testify that these funds came from the United States Government because that appears on the face of the check? Where does it appear on the face of the check where the funds came from?

A. That account is a Government account. That is money advanced us by the Government to husband these ships.

Q. In other words, it is because of your knowledge of this account, not the fact that the Government's name appears on it, is that right?

A. That is the account that the money came from.

Q. Do you deposit money in that account?

A. The Government does. It reimburses us.

Q. Does it pass through your hands?

A. No sir.

Q. Where are the moneys deposited?

A. Seattle.

Q. Have you ever seen any Government checks go into the account?

A. No sir, that come through the accounting department.

Q. Have you ever seen a ledger account?

A. Yes sir.

Q. Where?

A. In our auditor's office in Seattle.

Mr. Faulkner: I will just make the general objection, your Honor.

The Court: Let it be admitted and marked.

(Testimony of Captain Henrik E. Sievers.)

(The document was thereupon received in evidence and marked U. S. Exhibit 145.)

Mr. Pratt: I would like the record to show at this time, if the Court please, that this transaction relating to food products furnished to the Gilbert Hitchcock relates to the fifth count of the indictment.

The Court: Let the record so show.

Mr. Faulkner: And it is offered on that count.

Mr. Pratt: Offered on that count, and it is also offered in connection with the first count of the indictment, namely, the conspiracy count, as an overt act in support of the conspiracy.

Mr. Faulkner: When I have said from time to time, your Honor, the same objection, I think I clearly identified it to your Honor. We discussed it fully both in the presence of the Jury and out, about the admissibility of these documents against the various defendants, none of whose names have ever been mentioned in connection with any of these transactions.

Mr. Pratt: Well——

Mr. Faulkner: I mean that is the objection I have to all these documents. When I have said general objection your Honor recognized when we were talking about eggs on the William Clark that it was the objection that was fully developed in relation to attempting to prove a thing by its subsequent condition that I was talking about. Now when I say [2015] general objection I would like to identify clearly in the Court's mind the resistance

(Testimony of Captain Henrik E. Sievers.)

the defense has made to the admissibility in a criminal case of a lot of documents without identifying the defendants.

The Court: Counsel has indicated that this testimony goes in as to the first count, the conspiracy count, and the fifth count of the indictment.

Mr. Faulkner: That is right.

The Court: The objection will be overruled and the testimony will go in.

Mr. Faulkner: That is the objection and then your Honor will recall that in connection with the ruling that the Court has made, the Court has had the assurance that they will connect defendants with these transactions.

The Court: Very well.

Mr. Faulkner: That is what I want to identify.

Mr. Pratt: Q. Captain, I now hand you another invoice relating to the delivery of food products to the steamship James Oliver as indicated by the purchase order which you had in your hand a few minutes ago, and I will ask if this paper, this invoice, comes from the regular records of your corporation, namely, the Alaska Transportation Company, and of the regular records kept in the ordinary course of business?

A. Yes, that is right, out of the voyage account.

Q. Now, this came into your hands and over your desk in the same [2016] manner as the invoice relating to the Gilbert Hitchcock, did it not?

A. Yes sir.

Q. I now show you this check in the same

(Testimony of Captain Henrik E. Sievers.)

amount as the invoice, namely, $153.90, check dated June 16, 1944, issued by your company, and upon which appears General Agency, Special Account, payable to Nye & Nissen, and showing the perforation indicating that the check was paid and endorsed also by Nye & Nissen, and I will ask you if that check comes from your regular records and whether that check was issued in payment of that invoice?

A. That is right. That came out of the office in the regular——

Q. And was paid out of Government funds in the same manner as the other?

A. Out of the same account.

Q. And the proceedings, the procedure relating to the payment of this invoice and the issuance of that check—those were identical with the other transaction, were they not?

Mr. Faulkner: Similar, Mr. Pratt.

Mr. Pratt: Yes, similar?

A. They were both handled in the same way.

The Court: The jurors will take a recess for a few minutes.

(Recess.) [2017]

The Court: Proceed.

Mr. Pratt: At this time I will offer in evidence the invoice and canceled check which were identified by the witness that relate to supplies delivered to the steamship James Oliver, the date of the invoice being May 23, 1944, and the check in payment June 16, 1944.

(Testimony of Captain Henrik E. Sievers.)

Mr. Faulkner: Same general objection which I identified a moment ago, your Honor.

The Court: Overruled.

Mr. Faulkner: Exception.

(The check was marked U. S. Exhibit 146 in evidence, and the invoice was marked U. S. Exhibit 147 in evidence.)

Mr. Pratt: These are offered in connection with the first count of the indictment.

Mr. Faulkner: These aren't mentioned in the indictment, are they?

Mr. Pratt: No. You may cross-examine.

Cross-Examination

Mr. Faulkner: I would like to first read to the jury, your Honor, part of Exhibit 144, which was not read by counsel for the Government, a certificate in the lower left-hand corner of this exhibit, reading as follows:

"I hereby certify that the services above specified have been performed or that the articles in quantity and quality above specified have been delivered to the [2018] vessel in good condition. Signed L. Williams, Master."

Another certificate:

"I certify that the services above specified have been performed or that the articles"—it undoubtedly is—"in quantity and quality"—we will get at it this way——

The Court: I suggest you hand it to him; he is more familiar with it.

(Testimony of Captain Henrik E. Sievers.)

Mr. Faulkner: I can read it very easily from the counterpart. On Exhibit 144 there is a certificate that reads, which is the identical stamp, is it not, as the one on 147?

The Witness: A. Yes.

Mr. Faulkner: That certificate reads:

"I certify that the services above specified have been performed or that the articles in quantity and quality above specified have been delivered to the vessel in good condition."

Q. Now, Captain, in connection with Exhibit No. 144, is there any handwriting on that certificate that is yours? A. No, sir.

Q. I understood that you approved the payment.

A. That understanding was not brought out to me here by anyone. I am in complete charge of all our company's operations in California; in other words, everything that is done I am responsible for.

Q. Well, your charge is responsibility.

A. In other words, [2019] I don't count eggs on every ship.

Q. Captain, I did not ask you about counting any eggs. I asked you if you approved that invoice.

A. When that invoice is sent from the San Francisco office to Seattle for their further checking and payment it has my approval.

Q. But it hasn't got it on there, has it?

A. I never sign each individual invoice.

Q. Somebody in your company has approved the prices, haven't they?

(Testimony of Captain Henrik E. Sievers.)

A. That's right.

Q. Somebody has approved the extensions, haven't they?

A. Those extensions and prices were approved by the personnel of the Olympic Steamship Company in the San Francisco office.

Q. You were in charge of those people, were you?

A. They do not work for me. The Olympic Steamship Company works for me, but not their personnel.

Q. I understood from your testimony that that was a record that was kept in the regular course of business of your company and you were in complete charge of it, and it was done under your direction and control.

A. Olympic Steamship Company works for me but not their personnel. They have their own officers managing it.

Q. They are not under your direction, are they?

A. The personnel are not. If there is something that is not done properly by Olympic Steamship Company my job is to go to their operating captain and raise hell, if I may use those words. [2020]

The Court: That seems to be the regular language.

The Witness: I don't go to each individual clerk.

Mr. Faulkner: Q. You are the big man in the area, just as you have expressed it here, in that you are the executive, is that right?

(Testimony of Captain Henrik E. Sievers.)

A. Some people call me that.

Q. Did they ever use any of the expressions you just used referring to you, Captain? Well, Captain, what did you have to do with that invoice?

A. I see almost every invoice; in fact, every invoice that goes from this office to Seattle I look at.

Q. Did you look at those?

A. I am quite sure I did. I look at at least 30 of them every day.

Q. There is an O.K. for payment there. Did you ever sign the O.K. for payment?

A. I didn't sign the O.K. for payment, no.

Q. Here is another invoice, the price is O.K., extensions O.K., O.K. for payment. Did you sign that? A. No.

Q. Did it go from your office O.K.'d for payment to Seattle?

A. The O.K. for payment is signed in Seattle at the present time.

Q. Did the two invoices there, one is 144, I think and one 147, did they leave San Francisco and were they forwarded to Seattle by you for payment?

A. They were forwarded to Seattle by the Olympic Steamship Company for payment by my company, and frequently I find something wrong with an invoice and I pull it out and it never reaches Seattle, it isn't sent to [2021] Seattle; it isn't sent to Seattle unless I think it should be paid.

Q. Captain, I just want to find out if those two invoices left San Francisco, and under your responsibility they went to Seattle for payment?

(Testimony of Captain Henrik E. Sievers.)

A. That's right. They left San Francisco under my responsibility, but I didn't stick them in the envelope or lick the flaps.

Q. I didn't ask you about doing anything, or putting anything in an envelope. These two documents left San Francisco. You were the head man of your Company. They were sent up there with your approval for payment?

A. That's right.

Q. Isn't that correct? Do you recall when those documents went to Seattle?

A. I would say within a week from the time that the vessel sailed.

Q. Is there any notation of when they went to Seattle, on the documents themselves? Is there any marking which would show when they went to Seattle?

A. No, there wouldn't be a date. There is a date here when they were received in San Francisco office. They generally lay around there a week before they sent them north, generally wait until the ship sails. See that date? That is when it was received in the San Francisco office.

Q. Of the Olympic Steamship Company?

A. Yes. See that in the corner?

Q. Is that the date, May 24th? I think it is May 24th on the [2022] exhibit.

A. That's right, May 24th. And it arrived in Seattle previous to that date.

Q. This is the payment date. A. Yes.

Q. And is the date of the issuance of the check

(Testimony of Captain Henrik E. Sievers.)

the date on the check. Is there a corresponding mark showing that this—withdraw that.

The information you just gave relating to U. S. Exhibit 147, isn't that correct?

A. I wouldn't know.

Q. Would you look for it, please?

A. That's right.

Q. Now, is there any indication, Captain, when Exhibit 144 was received by the Olympic Steamship Company?

A. No, the stamp is missing on this one.

Q. What?

A. The stamp is missing on this one. The girl must have got there late that morning, there is no received stamp.

Q. Well, as a big executive, Captain, did you keep track of the time the girls came to work?

A. Well, as I said before, the girls do not work for me. The girls are employed by the Olympic Steamship Company, and I wouldn't try to interfere with their personnel. They try to do their own job.

Q. The check that went to pay the first invoice, 144 which is dated, appears to be undated, May 1, 1944, that was paid by check on May 12, some twelve days later.

A. It was.

Q. The check issued from Seattle, Washington.

A. That was very quick. Usually it was longer than that.

Q. At all events, there is no question about

(Testimony of Captain Henrik E. Sievers.)

May 12, 1944 [2023] being the time the Alaska Transportation Company issued this check to pay that invoice? A. Right.

Q. Did you receive any instructions from anybody, or any request from anybody, either a Government officer or otherwise, to decline to pay the invoice No. 144 or 147?

A. I didn't receive any such request.

Q. How many persons were in San Francisco working under you?

A. At that time?

Q. Yes, in October, 1944.

A. Just the Olympic Steamship Company. I was the only employee of Alaska Transportation Company in this area.

Q. In other words, you and the Olympic Steamship Company ran the business of the Alaska Transportation Company in California?

A. That's right. They had employees, but I did not.

Q. Did you receive as the representative of the Alaska Steamship Company any direction of any kind in writing as to what your company should do in respect to paying either of the invoices that I have just referred to?

A. Not to my knowledge, no.

Mr. Faulkner: That is all.

The Witness: My visits to the home office are at infrequent intervals; it is only when I do something wrong that they call me up there to talk to me about it.

(Testimony of Captain Henrik E. Sievers.)

Q. I mean did any Government agency, any member of the FBI or anyone ever indicate to you that they had examined any of the merchandise reflected in that invoice and suggested that you [2024] take it up either with Nye & Nissen or that you decline to pay the bill. A. No.

Mr. Faulkner: That is all.

Mr. Pratt: That is all, Captain.

I now offer in evidence, if the court please, Government's Exhibit 6 for Identification, which is the general agency contract between the Government and the Alaska Transportation Company, together with letter allocating the steamships Gilbert Hitchcock and the James Oliver to the management of that company under that contract.

Mr. Faulkner: The same general objection, your Honor.

The Court: Overruled.

(U. S. Exhibit 6 for Identification was thereupon received in evidence.)

Mr. Faulkner: Exception.

HAROLD JACKSON,

called as a witness for the Government; sworn

The Clerk: Will you state your name to the court and jury, please?

A. Harold Jackson.

Direct Examination

Mr. Pratt: Q. Your home is here in San Francisco, is it? A. That is true.

(Testimony of Harold Jackson.)

Q. What is your occupation?

A. Now I am acting chief, repair cost control section.

Q. You are in the employ of——

A. War Shipping Administration. [2025]

Q. In May, 1944, and in April, 1944, in whose employ were you?

A. Olympic Steamship Company.

Q. In that connection did you have something to do with the supplying of food products to the steamships that were under the management of Alaska Transportation Company and its agents, Olympic Steamship Company?

A. That is true, as purchasing agent.

Q. You were the purchasing agent, were you not? A. That is true.

Q. I direct your attention to a paper and ask if you can identify it. A. That is a——

Q. That is an office copy, is it not, of the purchase order of the United States of America, War Shipping Administration, care of Alaska Transportation Company, General Agent, to Nye & Nissen, for the supplying of certain food products for the steamship Gilbert Hitchcock, Voyage No. 1?

A. That is true.

Q. Did you issue this purchase order?

A. That's right.

Q. What did you do with it?

A. The original was forwarded to the vendor, who was Nye & Nissen, Incorporated.

Q. Nye & Nissen.

(Testimony of Harold Jackson.)

Mr. Faulkner: Would your Honor ask Mr. Jackson to speak up a little louder?

The Witness: Surely.

Mr. Faulkner: Thank you.

Mr. Pratt: Q. Did you come into personal contact at all with anybody of Nye & Nissen in connection with that order? [2026]

A. I believe that order was directed to a gentleman by the name of Mr. Berman. That was as requested by the Port Steward of the company.

Q. Port steward of your company?

A. Yes.

Q. Of Alaska Transportation Company, or Olympic?

A. Olympic Steamship Company.

Q. Did you, personally, talk to anyone in connection, anyone in Nye & Nissen in connection with the matter?

A. Offhand, we would telephone them and state what the order contained and when we knew when the ship would be available for stores and we would notify them as to when and the time of delivery.

Q. Was this purchase order issued any length of time before the food products were to be delivered to the boat?

A. That's right. It was issued April 10th.

Q. It was issued April 10th.

A. As indicated.

Q. To be delivered when?

A. April 29th.

(Testimony of Harold Jackson.)

Q. If says, "Delivery time expected April 29, 1944." A. Yes.

Q. Do you know when, in fact, these food products were actually delivered to the boat?

A. That is too long ago to give the exact date.

Q. Do you know how Nye & Nissen were notified as to the exact time when the products were to be delivered?

A. I would say I telephoned them as to the time and place.

Q. To whom did you telephone?

A. Well, naturally, we try— [2027] we would ask for Mr. Berman, and if he wasn't there we would leave the message with somebody at the office.

Q. Do you know Mr. Berman personally?

A. I don't believe I do.

Mr. Pratt: This purchase order is offered in evidence, if the court please.

Mr. Faulkner: May I ask Mr. Jackson a question?

Q. Mr. Jackson, you have no recollection of ever having talked to a particular person that you could identify as having held a conversation with in respect to this order, do you?

A. May I have that question again?

Mr. Faulkner: Would you read the question, please?

(Question read by the reporter.)

A. No, I couldn't; it is too long ago.

Q. This is your copy? A. Yes.

(Testimony of Harold Jackson.)

Q. Is this a confirmation?

A. No. That is the office copy of the purchase order.

Q. In other words, does this document represent the first indication to the firm of Nye & Nissen that you wished to order this merchandise from them?

A. That is a copy of the purchase order that was sent to Nye & Nissen as of April 10.

Q. If the order had been telephoned in would it bear the word "Confirmation"?

A. Well, in a case like that we would not telephone an order in at such a period of time for delivery. We may indicate on the telephone that there is a delivery coming, I mean a purchase order being sent to them. [2028]

Q. But as far as this is concerned, this would represent the order of the company you represent, Nye & Nissen, to supply that merchandise?

A. Right.

Mr. Faulkner: The general objection, your Honor, that we noted a moment ago.

The Court: Overruled.

Mr. Faulkner: Exception.

(The document was marked U. S. Exhibit 148, in evidence.) [2028-a]

Mr. Pratt: This is a purchase order reading in part as follows:

"United States of America War Shipping Administration, c/o Alaska Transportation Company, General Agent.

(Testimony of Harold Jackson.)

"To Nye & Nissen, 17th and Missouri, San Francisco, California.

"Attention: Mr. Berman. Date 4/10/44. Delivery time: Expected 4/29/44; to SS. Gilbert Hitchcock; Pier, will advise; Department Steward."

Then follows a description of the products:

"1260 pounds of butter, 60-pound cases, Grade AA-93.

"55 cases eggs AA Medium, 30-dozen case."

Then, "Cheese:"

"175 pounds American Cheese, 75 pounds of Swiss, 70 pounds Pimiento, 20 pounds Cottage, 10 pounds Parmesan."

"F. D. A. Inspection."

And below:

"Vendor—follow these instructions. Render original and five copies of invoice to above address on date of delivery, c/o Olympic Steamship Company, Inc. Attach itemized receipt signed by department head to invoice. All invoices must show our purchase order number, name of vessel and department to which goods are delivered as shown above."

Now, at the right below is a certificate: [2029]

"I certify that the above specified articles have been received, quantity and quality correct, or that services have been rendered as stated. Signed L. Williams, Master."

Q. When was that put on there?

A. The signature L. Williams, Master?

Q. Yes.

(Testimony of Harold Jackson.)

A. That would be some time after receipt of the goods in question and prior to the departure of the vessel from the port.

Q. I take it that this vessel, the Gilbert Hitchcock, was a new boat?

A. That is right.

Q. I now direct your attention to another purchase order of the United States War Shipping Administration, c/o Alaska Transportation Company, General Agent, from Nye & Nissen; Attention of Mr. Berman; for delivery to the steamship James Oliver, Voyage 4, dated May 22, 1944; delivery time May 23, 1944," for a quantity of butter and eggs. Is that the original, duplicate original, of the purchase order issued by you?

A. That is a carbon copy, office copy.

Q. That is your office copy, duplicate original, a carbon copy, is it not? A. That is right.

Q. I notice a rubber stamp on the back of this paper. Do you know where that was affixed?

A. I would say that was affixed at the home office of the Alaska Transportation Company, which was in Seattle, Washington. [2030]

Q. And these purchase orders are sent to Seattle, are they?

A. That is right, for payment.

Q. For payment? A. Yes, sir.

Q. That is, they are sent in connection with the invoice, is that right?

A. That is right, and supporting documents.

Mr. Pratt: This is offered in evidence.

(Testimony of Harold Jackson.)

Mr. Faulkner: Same general objection.

The Court: It may be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 149.)

Mr. Pratt: Q. Do you recall any conversation with anybody at Nye & Nissen in connection with that purchase order?

A. I don't recall offhand, but I would say from looking at the date of the purchase order, the delivery date of that purchase order, most likely it was given over the phone and the original was a confirmation.

Q. Was that because the date of delivery is the day after the date of the purchase order?

A. That is right, to insure its delivery to the ship.

Mr. Pratt: Cross-examine.

Cross Examination

Mr. Faulkner: Q. Mr. Jackson, was this first purchase order part of the files kept by you?

A. May I see it? [2031]

Q. I am directing your attention to the Gilbert Hitchcock, which you referred to first. Is that part of your files?

A. Do you mean the files retained in San Francisco?

Q. I will put it this way: Is that the purchase order that was issued under your direction while you were down there with the Olympic Steamship Company? A. I believe so.

(Testimony of Harold Jackson.)

Q. I call your attention that the original purchase order calls for how many pounds of butter?

A. 1260.

Q. That has been changed in pencil, has it not?

A. That is right.

Q. And it has been increased to 1500?

A. 1500.

Q. How many cases of eggs were called for in the purchase order, as it was originally issued?

A. 45.

Q. And then it was changed in pencil?

A. That is right, to 55.

Q. Now, there is another change of the quantities on the purchase order, is there not?

A. Yes, sir.

Q. What item is that?

A. 70 pounds of Pimiento cheese, I believe that is it.

Q. May I see that, please? Well, it looks like the 70 was crossed off and another figure put in this, doesn't it? A. I believe so.

Q. Do you recall what the figure put in its place was?

A. Not offhand. I would have to see the invoice.

Q. At all events, Mr. Jackson, after that purchase order was [2032] issued by you later you had pass through your hands this—is that the Gilbert Hitchcock? A. That is right.

Q. That invoice which is marked here Govern-

(Testimony of Harold Jackson.)

ment's Exhibit 144 passed through your hands, did it not? A. That is right.

Q. You will notice your signature on it?

A. That is right.

Q. Pardon me? A. That is true.

Q. In other words, when the invoice came to you it said, "Prices O. K.," and there is a signature, "Harold Jackson"— A. That is right.

Q. And the extension, "O. K., Harold Jackson" —that is your handwriting on that exhibit?

A. That is true.

Q. That means the prices charged when multiplied by the weights, or whatever it is, have been checked to see if the computation of the vendor has been correctly made, isn't that what it means?

A. I would say it was the prices charged for the quality requested on the purchase order.

Q. And you approved that, isn't that correct?

A. Yes, sir, that is true.

Q. In respect to this Exhibit 149, which relates to the Oliver, that called for 2 boxes of butter, did it, and 8 cases of eggs? A. I believe so.

Q. And the invoice, No. 147, passed through your hands, did it not, and was approved by you? It appears to have your signature, does it?

A. Yes, sir, for the prices and extensions.

Q. That is what I mean?

A. Not the extensions. [2033]

Q. In other words, you approved the prices on that order? A. That is true.

(Testimony of Harold Jackson.)

Q. And some other employee, I assume, approved the multiplication, isn't that right?

A. The extensions, yes.

Q. Mr. Jackson, No. 149 bears the signature, "Approved, R. L. Way, Master."

A. That is true. [2033-a]

Q. Is that correct? A. Yes.

Q. I assume he approved that in a manner similar to the manner in which Mr. Williams approved Exhibit 148? A. That is true.

Q. Which would mean sometime after the paper came into existence and before the sailing of the vessel? A. That is true.

Q. Do you know when either of those vessels sailed?

A. I couldn't tell that. There are too many ships.

Q. You don't remember that? A. No.

Mr. Faulkner: I think that is all.

Mr. Pratt: That is all.

Mr. Faulkner: Oh, just one question.

Q. Did you receive any communication or direction of any kind from any Government agency or from any Government officer, either oral or in writing, not to approve either invoice No. 147 or invoice No. 144? A. No.

Mr. Faulkner: You did not. That is all.

Mr. Pratt: That is all.

Mr. Faulkner: Just a moment.

Q. The articles called for required inspection by the War Food Administration, did they not?

(Testimony of Harold Jackson.)

A. That is true.

Q. And did you receive a certificate of inspection? A. I believe we did.

Mr. Faulkner: May I have those?

Mr. Pratt: The Government produces these papers asked for by Mr. Faulkner, one relating to the James Oliver, and the other relating to Gilbert Hitchcock. [2034]

Mr. Faulkner: Q. Did these pass through your hands, Mr. Jackson, these two egg grading certificates?

A. I can't really say that they did, or they did not. I would have to see the original.

Q. Pardon me?

The Court: He would have to see the original, he said.

Mr. Faulkner: Q. This is the original. That is an original on one ship and this is a copy of one on the other; that is right, isn't it?

Mr. Pratt: I think that is right, so far as I know, although I have not examined them.

The Witness: I can't say that I have or I have not.

Mr. Faulkner: I will ask that the egg grading certificates relating to the Gilbert Hitchcock, the first one referred to, be marked for identification Defendants' Exhibit next in order.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit AO for Identification.)

Mr. Faulkner: And I ask that the egg grading

(Testimony of Harold Jackson.)

certificate for the James Oliver be marked for identification next in order.

The Court: It may be admitted and marked.

(The document was marked Defendants' Exhibit AP for Identification.)

Mr. Pratt: Is that all? [2035]

Mr. Faulkner: No, I noticed something there I would like to ask him about.

Q. Mr. Jackson, I notice on this original certificate that it bears a receipt stamp from the Olympic Steamship Company. Did you observe that?

A. I did. There must be a copy——

Q. Does that indicate that that is the original that was in the files of the Olympic Steamship Company, that stamp?

A. It would indicate that it was in the files. Possibly the duplicate is stamped and I could tell by seeing the duplicate, which I imagine is in Seattle.

Q. But it is apparent to you that this particular one had been received in the Olympic Steamship Company at sometime? A. That is true.

Q. Do you know the circumstances as to how it got out of the files of the Olympic Steamship Company and got into the files of Mr. Jackson of the FBI?

The Court: If you know of your own knowledge.

Mr. Faulkner: Q. Do you know of your own knowledge?

A. It has been so long ago it is hard for me to recall.

(Testimony of Harold Jackson.)

Q. Do you remember them coming down and looking at your files? A. Yes, I do.

Q. Mr. Johnson, here? A. That is true.

Q. Do you recall about when that was?

A. I would say about May.

Q. Of what year? A. 1944. [2036]

Q. Right about the time of the delivery of the goods? A. Perhaps.

Q. Is that right? A. Yes.

Q. And at that time you gave him some documents? A. I believe so.

Q. Do you recall, Mr. Jackson, in respect to the time of the delivery of the goods to the James Oliver how long after the goods had been delivered to the James Oliver did someone come down to your office from the FBI? A. I can't recall.

Mr. Faulkner: That is all.

Mr. Pratt: That is all.

The Court: You may step down. Call your next witness.

Mr. Pratt: At this time, if the Court please, the Government offers in evidence Exhibit 8 or Identification, which is the general agency contract between the United States War Shipping Administration and the American Hawaiian Steamship Lines. This is a certified copy, which includes a letter of allocation to that company of the steamship Czechoslovakia Victory, the transactions relating to that steamship being described in count 6 of the indictment.

Mr. Faulkner: The same general objection, your Honor.

The Court: The objection will be overruled. Let it be admitted and marked.

(U. S. Exhibit 8 for Identification was thereupon received in evidence.) [2037]

Mr. Pratt: Mr. Simmons.

ARTHUR W. SIMMONS,

called as a witness for the Government; sworn.

The Clerk: Q. Will you state your name?

A. Arthur Simmons.

Direct Examination

Mr. Pratt: Q. Your name, please?

A. Arthur Simmons.

Q. Arthur W. Simmons?

A. That is correct.

Q. Mr. Simmons, you are an official are you not, of the American Hawaiian Steamship Lines?

A. Yes, sir.

Q. Here in San Francisco, is that right? And what is that position?

A. Assistant to the treasurer.

Q. Are you familiar with the fact that your company had the operation of the steamship Czechoslovakia Victory under a general agency contract with the War Shipping Administration?

A. Yes, sir.

(Testimony of Arthur W. Simmons.)

Q. In that connection, what were your functions or duties?

A. Do you mean as operators of the vessel?

Q. Yes.

A. We operated as general agents for the War Shipping Administration.

Q. And as an officer of the American-Hawaiian Steamship Company did you have charge of general supervision of the accounting system in your office?

A. Well, I am not an officer of the corporation.

Q. But you have some functions in connection with the accounting system?

A. That is right.

Q. And with the records of the company?

A. That is right.

Q. I show you a paper here and ask you if you can identify this paper as coming from the regular records of your company, kept in the ordinary course of business. A. It is.

Q. And that is a purchase order, is it not?

A. That is right.

Q. From the United States of America, War Shipping Administration, American Hawaiian Steamship Company, General Agent, to Nye & Nissen, for the delivery of a certain quantity of eggs to the Czechoslovakia Victory, Voyage No. 2, dated April 21, 1944, is that right?

A. That is correct.

Mr. Pratt: It is offered in evidence.

Mr. Faulkner: Will your Honor indulge us a

(Testimony of Arthur W. Simmons.)

moment, please? May I see it? May I ask Mr. Simmons a question, your Honor, now?

The Court: Very well.

Mr. Faulkner: Q. Mr. Simmons, did you prepare this purchase order? A. No, sir.

Q. Did you have anything to do with the ordering of the merchandise involved in the purchase order? A. No, sir.

Q. Do you know the circumstances under which they were ordered? A. I do not.

Q. Is the paper kept in a department of which you are the chief?

A. That is right, after the payment. [2039]

Q. What? A. After it is paid.

Q. Only after it is paid?

A. That is right.

Mr. Pratt: I would like to inform counsel that the purchasing officer is here and will testify. That, perhaps, will shorten your examination of this witness.

Mr. Faulkner: In other words, if I know I will have the privilege of examining in court the man who prepared it, we merely make the same general objection, your Honor.

The Court: With the understanding he will be called, I will allow it. Let it be admitted and marked.

(The document was marked U. S. Exhibit 150 in evidence.)

Mr. Pratt: Q. After these products were delivered to the vessel did your company receive an

(Testimony of Arthur W. Simmons.)

invoice from Nye & Nissen? I hand you this invoice and ask if that comes from the records of your company. A. Yes, it does.

Q. And was that submitted to your company by Nye & Nissen? A. Yes, sir.

Mr. Pratt: This is also offered in evidence.

Mr. Faulkner: The general objection only, your Honor.

The Court: The objection may be overruled. Let it be admitted and marked.

(The document was marked U. S. Exhibit 151 in evidence.)

Mr. Pratt: Q. I also show you a canceled check dated May 23, 1944, issued by American Hawaiian Steamship Company to Nye & Nissen in the sum of $251.25, which has the perforation [2040] showing it was paid, the endorsement of Nye & Nissen on the back, and I ask you if that canceled check comes from the regular records of your company.

A. It does.

Q. Is that the check that was given in payment for this paper, Exhibit 151?

A. That is correct.

Q. Out of what funds was that check paid?

A. It was paid out of Government funds.

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness, your Honor.

The Court: If he knows he may answer.

Mr. Faulkner: Exception.

Mr. Pratt: Q. What is your answer?

(Testimony of Arthur W. Simmons.)

A. It was paid from Government funds.

Mr. Pratt: The check is offered in evidence, if the Court please.

Mr. Faulkner: The same general objection.

The Court: Let it be admitted and marked.

Mr. Faulkner: Exception.

(The document was marked U. S. Exhibit 152 in evidence.)

Mr. Pratt: You may cross-examine.

Cross-Examination

Mr. Faulkner: Q. Mr. Simmons, with respect to these two documents, all you know about the transactions is so far as they relate to ordering this merchandise, is that these are part of the files of your company, is that right?

A. Well, all [2041] I know about them is that they were paid in our office, and that is the documents that were paid.

Q. Did you go through your files for the purpose of obtaining records relating to this transaction here in court?

A. I didn't understand you.

Q. Did you receive a request to go through your files and bring in documents relating to this transaction into court? A. No, sir.

Q. How did you get them?

A. They—not at this time. I was requested to furnish those documents sometime ago.

Q. When was that?

(Testimony of Arthur W. Simmons.)

A. I would imagine about six or eight months ago. I can't recall exactly the time.

Q. Looking back at the time that the transactions appear to have occurred, whenever they may have been, the invoice was dated May 3, was it not?

A. That is correct.

Q. And the check was dated May 23rd?

A. That is right.

Q. Did you ever receive any direction of any kind, orally or in writing, from any Government officer, to not approve this invoice No. 151 for payment? A. To not approve it?

Q. Yes. A. No.

Q. Or not to issue a check in payment of it?

A. No, that is the authority we have under our agreement to pay these bills when they are properly approved by the authorized people in our employ.

Q. I mean, was there any circumstance where any Government [2042] officer suggested to you not to pay this particular bill, that your know of?

A. No.

Q. And you paid it in the regular course of business, almost three weeks after it was dated?

A. That is correct.

Mr. Faulkner: I think that is all.

The Court: Ladies and gentlemen of the jury, it is my desire to admonish you that you are not to converse, either among yourselves or with anyone else, concerning this trial, that you are not to permit anyone to address you concerning it, nor to form or express an opinion until the matter is

finally submitted to you. Keep in mind that it is the duty of the jury, if anyone approaches you, directly or indirectly, by any communication of any kind or character, to report that to the court. Keep that admonition in mind. The jurors may be excused until ten o'clock tomorrow morning.

(An adjournment was taken until tomorrow, Friday, March 1, 1946, at 10:00 o'clock a. m.)

Friday, March 1, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

The Court: Waive the roll call, stipulating and agreeing all the jurors are present and seated in the box.

Mr. Pratt: Call Mr. Pruner.

If the Court please, your Honor will recall that the last witness was Mr. Simmons, an officer of the American Hawaiian Steamship Company, and that I offered in evidence and the court admitted the general agency contract between the Government and the American Hawaiian Steamship Company. I would like to direct attention at this time to the fact that this contract relates to the sixth count of the indictment; it relates to transactions that had to do with the placing of stores aboard the steamship Czechoslovakia Victory. The testimony of Mr. Simmons and of this witness, and of the next witness, is offered in connection not only with the sixth count of the indictment, but also as an overt act in relation to the first count of the indictment.

The Court: Very well.

JOHN M. PRUNER,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. John M. Pruner. [2044]

Direct Examination

Mr. Pratt: Q. John M. Pruner?

A. Yes.

Q. Mr. Pruner, your home is here, is it not, San Francisco? A. Oakland.

Q. Your occupation is what?

A. Purchasing agent.

Q. For what company?

A. The American-Hawaiian Steamship Company.

Q. As purchasing agent for that corporation, American-Hawaiian Steamship Company, did you have among your duties the ordering of stores, of ships' stores for vessels that were being managed by that corporation in behalf of the War Shipping Administration? A. Yes, sir.

Q. You occupied that position, did you not, in April of 1944? A. Yes.

Q. I call your attention to this paper marked Exhibit No. 150, a purchase order of the War Shipping Administration, American-Hawaiian Steamship Company, General Agents, directed to Nye & Nissen, dated April 21, for delivery to the Czechoslovakia Victory, Voyage 2, and I will ask you if you can identify that document.

A. Yes, sir.

(Testimony of John M. Pruner.)

Q. Your name appears on it, does it not, Mr. Pruner? A. Yes, sir.

Q. Did you issue this purchase order?

A. My office.

Q. Your office, one of your assistants?

A. Mr. Anderson.

Q. What? A. Mr. W. D. Anderson.

Q. W. D. Anderson. This is an office copy, a copy of the original purchase order, is it not?

A. Yes, the receipt copy.

Q. Coming from the files of your corporation?

A. That is right.

Q. You say it is a receipt copy?

A. That's right.

Q. What do you mean by that?

A. Well, our purchase orders are made out in six or seven copies and they are all marked at this particular place. This is marked "Receipt copy"; that is the one we have signed.

Q. This is a rubber stamp, a "Paid" stamp. May 23, 1944, giving the number of the check with which it was paid? A. Right.

Q. Did you have anything to do with the payment of this purchase of stores? A. No.

Q. I see. This includes the—or involves entirely the purchase of 25 cases of eggs, Fresh, Whites, Medium. A. Yes.

Q. Wired cases. A. That's right.

Q. Below on this purchase order, at the left, is a pencil signature. Perhaps you could read the name. A. Down here?

(Testimony of John M. Pruner.)

Q. Down at the bottom.

A. That is the steward.

Q. That was signed by the steward on the ship?

A. Steward on board the ship.

Q. Do you know what the name is?

A. No. We have a record of those in the office, and we compare them.

Q. It is rather illegible.

A. Most of them are.

Q. That simply indicates the receipt by the steward of the eggs described in the purchase order?

A. Yes; that signature [2046] is on the crew list, which we can compare.

Q. Is that name Porterfield, or some such name? Do you recall any such name?

A. It is hard for me to do that on account of we change stewards so often.

Q. Do you know with whom there was any direct contact with Nye & Nissen, do you know of any individual at the office of Nye & Nissen with whom a direct contact was had in connection with this purchase order? A. I do not.

Q. If there had been such contact would that have been with you or with your assistant?

A. My assistant.

Mr. Pratt: Will you let me have Exhibit No. 56?

Q. Mr. Pruner, is there some connection between the American-Hawaiian Steamship Company and Williams Dimond & Company?

A. Yes.

(Testimony of John M. Pruner.)

Q. Who are Williams Dimond & Company?

A. That is a company owned by the American-Hawaiian Steamship Company.

Q. Is Williams Dimond & Company here in San Francisco? A. That's right.

Q. Are you in contact with that concern?

A. I purchase for that concern.

Q. You purchase for that concern also?

A. That's right.

Q. You say that is a wholly-owned subsidiary of American-Hawaiian? A. That's right.

Q. I direct your attention to another paper here which is marked Government's Exhibit No. 56 For Identification, a purchase [2047] order, War Shipping Administration, South Atlantic Steamship Lines, General Agents, Williams Dimond & Co. Agent, dated April 21, 1944, for delivery of certain products, namely, 45 cases of eggs and 20 pounds of Parmesan cheese to the steamship Cape Pillar, Voyage 3, and I will ask you if you can identify that purchase order.

Mr. Faulkner: May I see that one?

Mr. Pratt: Yes.

The Witness: A. Yes.

Mr. Pratt: Q. That also came from your office, did it not?

A. Yes, made out by the same Mr. Anderson.

Q. This is part of the regular records of Williams Dimond & Co.? A. That's right.

Q. Otherwise, the American-Hawaiian Steamship Company? A. That's right.

(Testimony of John M. Pruner.)

Q. This is a copy of the original purchase order —it is a copy of the original purchase order?

A. That's right.

Q. Issued to Nye & Nissen?

A. That's right.

Q. On April 21, 1944, for delivery to the Cape Pillar on April 25, 9 a.m.; is that right?

A. I presume so. I haven't seen it. Yes, that's right.

Q. Do you recall having anything to do with the supplying of stores for the steamship Cape Pillar?

A. At this late hour—it went through my office; my assistant handled it.

Q. It went through your office. The Cape Pillar was under [2048] whose management, do you know?

A. I wouldn't recall right now; South Atlantic —I don't know.

Q. South Atlantic Steamship——

A. Whatever is on that purchase order.

Q. Yes. Will you look at the purchase order again? A. We have so many.

Q. This Exhibit 56, the South Atlantic Steamship Lines, General Agents.

A. That's right.

Q. Williams Dimond & Company.

A. Agent.

Q. Agent. Do you know anything about the relationship between your company and the South

(Testimony of John M. Primer.)

Atlantic Steamship Lines, as general agents for the Government in the management of the Cape Pillar?

A. Well, the American-Hawaiian Steamship Company are general agents, that is, we run ships operated for the Government. The South Atlantic Steamship Company, theirs is the same position we are, they are general agents for the Atlantic Coast. Williams Dimond are our agents out here, and also the South Atlantic people on the Atlantic, so they are naturally agents.

Q. The issuance of this purchase order was in behalf of the South Atlantic Steamship Lines, as the representative of the War Shipping Administration? A. Through Williams Dimond.

Mr. Faulkner: If that is a fact, it will speak for itself—.

Mr. Pratt: Well, we will have further evidence on that. At this time I offer in evidence Exhibit 56 For Identification, this purchase order to Nye & Nissen, dated April 21, 1944, [2049] for delivery of supplies to the steamship Cape Pillar.

Mr. Faulkner: You offer that on what count?

Mr. Pratt: I offer this on the first count of the indictment.

The Court: Admitted and marked.

Mr. Faulkner: The same general objection that we delineated yesterday.

The Court: Overruled.

Mr. Faulkner: Exception.

(U. S. Exhibit 56 for Identification was thereupon admitted in evidence.) [2049-a]

(Testimony of John M. Pruner.)

Mr. Pratt: I think that is all. You may cross-examine.

Cross Examination

Mr. Faulkner: Q. Mr. Pruner, as I understand your relation to the Czechoslovakia Victory, at the time there was a purchase order made for the merchandise described in that Exhibit No. 150, you were the then purchasing agent of the American Hawaiian Steamship Company? A. Yes, sir.

Q. How long had you been a purchasing agent for that company?

A. I have been head purchasing agent since 1923.

Q. During that period of time have you dealt with the firm of Nye & Nissen? A. Sir?

Q. Have you as purchasing agent for that line dealt with the firm of Nye & Nissen?

A. Only since the beginning of the war.

Q. How long had you been dealing with that firm on May 4—April 21, 1944?

A. I couldn't give the exact date, but it was around the beginning of the war when we started to buy from them.

Q. And that particular purchase order was one that was issued in the regular course of business of your company to the firm of Nye & Nissen, is that correct? A. That is right.

Q. In connection with the merchandise that is covered by that order, which is 25 cases of fresh white medium eggs, isn't that correct?

A. That is right.

(Testimony of John M. Pruner.)

Q. Did you receive any complaint of any kind or get any [2050] document or advices of any kind relating to the quality of that merchandise?

A. No, sir.

Q. During the entire period of time that you dealt with the firm of Nye & Nissen did you receive any complaints of any kind against merchandise supplied by their company? A. I have.

Q. When?

A. Well, that is just hearsay that you hear now and then on the dock and where you turn back and get redeliveries.

Q. When was that?

A. I couldn't say that because we don't keep a record of those.

Q. The firm of Nye & Nissen was not the only firm that supplied poultry, or, rather, dairy products to the American Hawaiian, was it?

A. No, we have others.

Q. How about the standard of that merchandise? Did you ever have complaints on that?

Mr. Pratt: I object to that, if the Court please. It has no relevancy to this inquiry.

Mr. Faulkner: During the same period of time.

The Court: What is that question?

(Record read.)

The Court: The objection will be overruled. You may answer.

The Witness: I presume so. I couldn't say. At this time we were buying practically all our eggs

(Testimony of John M. Pruner.)

from this concern. [2051] They were a WSA contractor.

Mr. Faulkner: Q. When did you stop?

A. We stopped when the War Shipping Administration told us to.

Q. Sent a letter to you requesting——

A. We were bound to do that. We couldn't have stopped if we wanted to.

Q. Since that time how has the quality of eggs been, Mr. Pruner?

Mr. Pratt: I object to that.

The Court: The objection is sustained.

Mr. Pratt: He is talking about purchases from someone else, a different period.

The Court: The Court has ruled. The objection is sustained.

Mr. Faulkner: Q. Do you know whether any of the eggs that are reflected in that purchase order were condemned? A. No, sir.

Q. Has it been a usual thing for your company in the last year or so to have large quantities of eggs condemned?

A. That is not in my—I can't answer that question because it is not in my department.

Q. You do not know anything on that subject at all?

A. No, I only do the buying, and it is only occasionally that I hear something, and that is just hearsay as a rule.

Q. Are you familiar with the quantity of eggs

(Testimony of John M. Primer.)

that have come bac kon your ships that have been condemned for lack of [2052] quality?

A. After they made one voyage, yes.

Q. Pardon me?

A. After they made a voyage, yes.

Q. I mean, are you familiar with that subject?

A. I am, yes.

Q. How substantial have been the quantities of eggs that have come back and have been ordered condemned, if you know?

A. Recently there were quite a few.

Q. Now, recently you had no business with the firm of Nye & Nissen?

A. When I say recently, I do not mean that they were purchased recently. Those ships may be on six or eight months voyages, and the eggs that we take off now may have been purchased six or eight months ago.

Q. And recently you have had quantities of them that have come back bad?

A. Yes, but when they were purchased I couldn't say.

Q. In connection with the purchase order No. 150 which you have there, did you receive any direction of any kind not to pay the invoice that was received by your company in respect to that merchandise?

A. Those complaints would not come to me.

Q. What?

A. Those complaints would not come to me.

(Testimony of John M. Pruner.)

Q. In other words, that is not your department, is that correct? A. That is right.

Q. Now, you have a document there that I haven't got a copy of, No. 56. In April, 1944, you made a purchase of some eggs and cheese; you stated to Mr. Pratt that you were acting for [2053] one of these companies. Were you acting for Williams Dimond or for the South Atlantic?

A. Williams Dimond.

Q. And Williams Dimond were the agents for the South Atlantic?

A. That is right.

Q. And South Atlantic has some relation to War Shipping, is that right? A. That is right.

Q. What relation did Moore-McCormack have to either of the companies—I mean, American Hawaiian?

A. American Hawaiian and South Atlantic are on the same basis as far as the Government is concerned.

Q. What do you mean on the same basis?

A. Well, the Government allocates a ship to the American Hawaiian as general agents. They allocate them to the South Atlantic on the Atlantic coast as general agents. When the South Atlantic ships come to the west coast, Williams Dimond, our agent, represents them out here.

Q. The American Hawaiian is a local company, isn't it? A. That is right.

Q. Why doesn't American Hawaiian represent them?

(Testimony of John M. Pruner.)

A. Well, the Williams Dimond had represented them—have always been the agency end of our business.

Q. So this is a situation where the South Atlantic have some arrangement with the Government and then Williams Dimond have some arrangement with South Atlantic?

A. Yes, that happens everywhere. They haven't an office out here. They have to have somebody represent them.

Q. You are not an employee of Williams Dimond, but are a purchasing agent for American Hawaiian? A. That is right.

Q. And in that capacity you issue purchase orders for the Williams Dimond Company?

A. That is right.

Q. Have they a purchasing agent of their own?

A. No.

Q. In the regular course of your business then in that capacity you issue this purchase order to the firm——

A. My office did, yes.

Q. Pardon me? A. My office.

Q. Your office?

A. That is right. I have an assistant that handles that.

Q. When was that? A. Sir?

Q. When was that?

A. Well, the date is on that order.

Q. On April 21?

A. If that date is on there.

(Testimony of John M. Pruner.)

Q. Are either purchase order No. 150 or this one, No. 56, confirming purchase orders?

A. If they were it would be marked on there. This one is not.

Q. What is the time of delivery of the Czechoslovakia Victory?

A. There is no time on here.

Q. Doesn't it say May 4, 1944?

A. The delivery date is not on here. The reason——

The Court: The reason what? You may answer.

The Witness: The reason is we mail these orders out several days before delivery to give the supplier a chance, and [2055] then we phone them for delivery and they deliver on phone message.

Mr. Faulkner: Q. Did you, Mr. Pruner, recently at the request of the firm of Nye & Nissen, prepare for them a copy of the Czechoslovakia Victory purchase order?

A. Not to my knowledge.

Q. Will you look at that, please? Do you know whether that is a copy of the purchase order issued in connection with the supplying of eggs for the Czechoslovakia Victory?

A. I can't tell by looking at it.

Q. Pardon me?

A. I cannot tell by looking at it, this marked copy.

Q. Do you know whether there were two originals ever made up in relation to——

A. There would not—if we did that it would——

(Testimony of John M. Pruner.)

have to be at somebody's request, and they would have to show why.

Q. That is all right. Now, I notice that there is a memorandum here. That would indicate that some voucher or invoice issued in relation to this order was paid by your company on May 23, 1944, is that correct?

A. I presume so, if the stamp is on there. That is the regular stamp that our treasurer puts on the bill.

Q. Is there any record here of when this voucher, or, rather, when the goods covered by you as Exhibit 56 were paid for?

A. Well, that voucher—that is handled in a little different [2056] way. That is through Williams Dimond's office and not ours.

Mr. Faulkner: I think that is all.

Redirect Examination

Mr. Pratt: Q. Mr. Pruner, you mentioned the fact that you knew of some eggs condemned upon return from a long voyage. A. Yes.

Q. That is to say, you said six or eight months, after six or eight months the eggs were found to be inedible? A. Yes.

Q. The report that you had or the information did not relate to any supplies at or about the time they were supplied?

A. No. We do not try to connect that up.

Mr. Pratt: That is all.

(Testimony of John M. Pruner.)

Recross Examination

Mr. Faulkner: Q. Mr. Pruner, the eggs that were covered in both of those orders required a Food Department or Department of Agriculture inspection, did they not?

A. That is right.

Mr. Faulkner: Have you the inspection?

Q. Now, with reference to the condemnation of the quality of eggs that Mr. Pratt just referred to, it is a fact, is it not, Mr. Pruner, that the quality of eggs and the amount of condemnation in the last six months has been greater than at any time during the period that you have been supplying those vessels?

A. Well, I don't know whether I can exactly say yes or no on that. It is only in the last few months that we have been selling those eggs. [2057]

Q. What?

A. We have been disposing of them in a different manner now than we used to.

Q. Didn't you just tell Mr. Berman of the Nye & Nissen Company this morning out in the corridor there that the quality of merchandise in the egg line you have been receiving in the last six months since you stopped dealing with Nye & Nissen was worse than ever before? A. No.

Q. Didn't you have a conversation on that subject? A. No, I did not.

Q. You did not? A. No, sir.

Mr. Faulkner: That is all.

(Testimony of John M. Pruner.)

Mr. Pratt: That is all, Mr. Pruner. We do not have those certificates, Mr. Faulkner.

Mr. Faulkner: They may be a part of those that were given yesterday. Will your Honor indulge me just a moment?

Q. Do you know, Mr. Pruner, it is a fact, is it not, that in connection with these purchase orders that you received certificates of inspection from the Department of Agriculture?

A. That is right.

Q. And do they form part of your record?

A. Sir?

Q. Do they form part of your record?

A. That is right.

Mr. Pratt: I am mistaken. This did not come from the company. It purports to be a copy of a grading certificate in relation to the Czechoslovakia Victory. I will say further, if the Court please, that we have checked with the Department of [2058] Agriculture where this came from and there is no certificate so far as the Cape Pillar is concerned.

Mr. Faulkner: Q. Is that similar to the type of certificate that was received from time to time by your department? A. That is right.

Q. Now, that relates to the Czechoslovakia Victory, is that correct? A. That is right.

Mr. Faulkner: We offer it for identification, if your Honor please.

The Court: It may be admitted and marked.

(The document was thereupon marked Defendants' Exhibit AQ for Identification.)

(Testimony of John M. Pruner.)

Mr. Faulkner: Q. Would you, Mr. Pruner, examine your purchase order file in relation to the Cape Pillar and bring to court at a time that his Honor might suggest to you the balance of your file relating to that purchase order in relation to a certificate from the Department of Agriculture?

A. In other words, you want that certificate?

Q. Yes. A. I will look.

Q. Those certificates were paid for and ordered from the Department by your company, isn't that correct? A. Yes, we pay their invoice.

Q. By your company?

A. That is right, or by the Government through us.

Q. Would it be convenient to do that by two o'clock? [2059] A. I think so.

Q. Would that be agreeable?

A. I think so. [2059-a]

AUGUST HANSON

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. August Hanson.

Direct Examination

Mr. Pratt: Q. Mr. Hanson, you live here in San Francisco, do you not?

A. No; I live in Daly City.

Q. Where?

(Testimony of August Hanson.)

A. Daly City, San Mateo County.

Q. That is one of the suburbs of San Francisco, is it not?

A. San Francisco is a suburb of Daly City.

Q. Your place of business is here in San Francisco, is it not? A. Yes, sir.

Q. What is your occupation?

A. I am a, I would say supervisor or the foreman of the shore gang, or the maintenance superintendent.

The Court: For whom?

A. American-Hawaiian Steamship Company.

Mr. Pratt: Q. In that connection, do you have something to do in connection with the loading of vessels, stores on vessels that are under the management of the American-Hawaiian Steamship Company?

A. I load all stores on all vessels except the troopships, with the American-Hawaiian shore gang.

Q. Do you recall an occasion in April of 1944 when the steamship Czechoslovakia Victory was loaded with certain stores? A. Yes.

Q. Can you state when that was?

A. Well, the date, I don't [2060] just exactly know the date, but I have the distribution sheet of the payroll for that week.

Q. Oh, you have. Will you produce it?

Mr. Faulkner: He has what?

Mr. Pratt: The payroll distribution sheet.

Mr. Faulkner: Thank you.

(Testimony of August Hanson.)

The Witness: There is the check, the amount it cost for the loading of the stores at that time.

Mr. Pratt: Q. This paper you have produced, Mr. Hanson, is a copy of a distribution sheet in connection with the loading of the steamship Czechoslovakia Victory on the week of April 29, 1944, is that right? A. Yes.

The Court: Lay the foundation for it.

Mr. Pratt: Q. Did you make this record, yourself?

A. No. I handed it to the secretary of the Marine Superintendent; his secretary copies it off the records for me.

Q. As a matter of fact, this is not an original, this is a copy that you had made by somebody from the records from the company office?

A. Yes, from the records of our office.

Q. The original record of which this is a copy is available, is it?

A. It is available at Pier 28.

Q. Could you produce that?

A. I could yes. The original, I could.

Mr. Pratt: Do you want to see this copy? That is just a copy. [2061]

Mr. Pratt: I wonder if you could bring that original this afternoon, Mr. Hanson, at two o'clock and continue your testimony at that time. Could you do that?

A. I could do that.

Q. Conveniently. First, this record of which

(Testimony of August Hanson.)

this is a copy, was that kept under your supervision?

A. No. I turned the men's time slips in, giving their places, what they are doing that day, and then the girl makes out the payroll. This is a copy of the payroll. That is a distribution sheet for the payroll.

Q. Do you recall independently of this copy, or of the record of which that is a copy, do you recall the loading of the steamship Czechoslovakia Victory during this period April 29th?

Mr. Faulkner: He does not recall the period, even. A. I do recall the time.

Mr. Pratt: Q. Do you recall the time?

A. The time?

Q. Yes.

A. The day? I recall the time of loading the vessel, yes.

Q. Do you recall the facts of the occurrence?

A. I do, yes.

Q. In that connection?

A. In that connection.

Q. Do you recall at that time the arrival there at the pier where the Czechoslovakia Victory was to be loaded, do you recall the arrival of a quantity of eggs from the firm of Nye & Nissen?

A. I do.

Q. Now, are you able to state the date that that delivery was [2062] made?

A. Only through the payroll. Those dates—I have a number of ships. I couldn't memorize one

(Testimony of August Hanson.)

date, but checking there on the payroll could verify the men working on that. I know the ship, where she loaded. She loaded at the Encinal Terminal, berth 3.

Q. About the time that this occurred, were you interviewed by any Government agent?

A. Not at the time, no.

Q. How long afterward?

A. I think the very next day, or the day—a day or two after. That I don't just remember the date.

The Court: It is time for a recess.

(After Recess.)

The Court: Proceed.

Mr. Pratt: Q. Mr. Hanson, you testified that you were interviewed by some Government agents shortly after this steamship Czechoslovakia Victory was loaded. I hand you a paper here and ask you if you can refresh your recollection from this paper and tell the date when the loading of that Czechoslovakia Victory occurred.

A. Yes, sir.

Q. When was it?

Mr. Faulkner: Just a moment. Before any answer is given may I ask the witness about this paper?

The Witness: Yes, sir.

Mr. Faulkner: Q. Mr. Hanson, the paper that has just been handed to you was not a paper made in the regular course [2063] of business, was it?

A. No.

(Testimony of August Hanson.)

Mr. Faulkner: I would ask the paper be marked for identification.

(The document was marked Defendants' Exhibit AR for Identification.)

Mr. Faulkner: Q. That paper was written by an FBI agent, was it not? A. That is true.

Q. Was the Czechoslovakia Victory in the harbor at that time?

A. No, the Czechoslovakia Victory was at sea.

Q. At sea.

A. She went to sea the very next day after we stowed her.

Q. How many weeks after the occurrence of loading that ship was your meeting with the FBI agent? A. Two weeks, two and a half weeks.

Mr. Faulkner: Your Honor, I object to him using a statement prepared by the FBI in their handwriting signed by him, to refresh his recollection. It is not the type of document that a witness may use. I understand the rule of law is if an occurrence occurs in the regular coure of your business and you make an entry right at the time of the occurrence, or simultaneous with it you can use that later to refresh your recollection, but the document where you have been interviewed and talked to by investigating officers and they have prepared the document and submitted it to you for signature, would not be one that you could use to refresh your recollection [2064] I object to it being used for that purpose.

Mr. Pratt: I will say to the court that during

(Testimony of August Hanson.)

the intermission I showed this paper to Mr. Faulkner.

Mr. Faulkner: That's right. That is why I am prepared to make an objection to it.

Mr. Pratt: While this is a statement in the handwriting of an FBI agent it is signed both on the first page and the second page by the witness, himself, so it is his act. As far as the writing is concerned, it is not actually in his handwriting. He has signed it in two places. It is dated two days after——

Mr. Faulkner: You are just telling the witness the time it was loaded by mentioning these dates. In other words, that document is a document where some investigating officer sits down with a man and gets a statement out of him and prepares it and writes it out in their own hand, and is not the type of document that the rule of law permits to be used.

The Court: Well, since it is not challenged I will sustain the objection. There should be no difficulty in establishing any date.

Mr. Pratt: I am simply trying to avoid having the witness return.

Mr. Faulkner: That hasn't anything to do with the return of the witness.

Mr. Pratt: He will return with documents by which he [2065] can place the exact date.

The Court: Very well.

Mr. Pratt: So will you come back at two o'clock?

(Testimony of August Hanson.)

The Court: You said this document you have in mind was made up from time slips?

The Witness: Time slips and the payroll. This is the distribution of the payroll.

The Court: Are the time slips available, too?

The Witness: I presume they are.

The Court: So there is no question about it, you better bring those, too, so they won't send you back a third time. You may step down now.

The Witness: Thank you.

Mr. Faulkner: The point of the defendants' objection is not the time, because that is shown.

The Court: Well, he is going to get—you challenged the other testimony. He has to get the document at two o'clock. Call your next witness.

Mr. Faulkner: I would like this document the witness used before the recess marked for identification.

The Court: Let it be marked for identification.

(The document was marked Defendants' Exhibit AS for Identification.)

The Court: Call your next witness. [2066]

Mr. Pratt: At this time I offer in evidence Exhibit 4 for Identification, which is a general agency contract between the Government and the Deconhill Shipping Company. This is a so-called tanker contract between the Government and the Deconhill Shipping Company, and the exhibit also includes the letter of allocation to Deconhill Shipping Company of the steamship Mission San Diego for management by that shipping company.

The Court: Let it go in over counsel's objection.

Mr. Faulkner: Same objection, overruled and exception.

(U. S. Exhibit 4 for Identification was received in evidence and marked U. S. Exhibit 4.)

Mr. Pratt: I should like also the record to show if the Court pleases, that this relates to the allegations of the third count of the indictment.

LESLIE R. KERDELL,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Leslie R. Kerdell.

Direct Examination

Mr. Pratt: Q. Mr. Kerdell, your home is here in San Francisco, is it not? A. It is.

Q. What is your business?

A. I am secretary and treasurer of the Deconhill Shipping Company. [2067]

Q. That company has a general agency contract with the Government for the management of the steamship Mission San Diego? A. It has.

Q. That is a tanker? A. It is.

Q. Is it not, that vessel? A. It is.

Q. In connection with the management of that vessel, I will ask whether certain stores were purchased by your company in behalf of the War Ship-

(Testimony of Leslie R. Kerdell.)

ping Administration for loading on the Mission San Diego about May of 1944; is that right?

A. Yes, sir.

Q. I hand you a paper here which is an invoice of Nye & Nissen Company to the United States of America, War Shipping Administration, Deconhill Steamship Company, general agents, covering 10 cases of eggs, Medium, Processed, AA, and items of cheese and butter, and will ask you if you can identify this paper. A. Yes, I can identify it.

Q. Does that paper come from the regular records of your corporation kept in the ordinary course of business? A. It does.

Mr. Pratt: I offer it in evidence.

Mr. Faulkner: Just the general objection, your Honor.

The Court: Overruled.

Mr. Faulkner: You are offering it as to all defendants on the third count and the first count?

Mr. Pratt: That's right.

(The document was marked U. S. Exhibit 153 in evidence.) [2068]

Mr. Pratt: Q. I now hand you another paper, a copy of a purchase order from the United States of America, War Shipping Administration, by Deconhill Shipping Company, general agents, dated May 10, 1944, directed to Nye & Nissen, for the purchase of certain stores to be delivered to the Mission San Diego, and ask you if you can identify this paper. A. Yes, sir, I can.

Q. Does that come from the regular records of

(Testimony of Leslie R. Kerdell.)

your corporation, kept in the ordinary course of business? A. It does.

Q. The original of this paper was sent, I suppose, to Nye & Nissen, was it not?

A. That is correct.

Q. I notice the notation on it, "Confirming telephone order"; do you know who actually gave the order by telephone?

A. I can't recall, but Mr. Granville had an assistant at that time. This is signed by J. J. Granville, our purchasing agent.

Q. Was Mr. Granville your purchasing agent at that time?

A. He was in charge of the purchasing department.

Q. Is he still your purchasing agent?

A. No. He is not our purchasing agent now.

Q. Do you know where he is?

A. Yes, he is still with us in the capacity of assistant operating manager.

Q. Here in San Francisco?

A. He is here at the San Francisco office, though he is not in San Francisco at the moment.

Q. He is expected back shortly?

A. He is expected back. [2069]

Mr. Pratt: May this be marked for identification?

Mr. Faulkner: I don't object to—

Mr. Pratt: Then I offer it in evidence.

Mr. Faulkner: Subject to our general objection.

The Court: Let it be admitted and marked.

(Testimony of Leslie R. Kerdell.)

(The document was marked U. S. Exhibit 154 in evidence.)

Mr. Faulkner: Mr. Kerdell, I think, stated he was quite certain that that was sent to Nye & Nissen, and I assume it was.

Mr. Pratt: That's right.

Q. I now hand you another paper, a canceled check, issued by Deconhill Shipping Company, general agents, Special Account, dated at San Francisco, May 20, 1944, payable to Nye & Nissen, Inc., for $307.07, signed by your company, Special Account, and that bears your signature, does it not, Mr. Kerdell? A. It does.

Q. That comes from the regular records of your company? A. It does.

Q. It shows by the perforation that the check was paid, does it not? A. It does.

Q. With the endorsement of Nye & Nissen?

A. Yes.

Mr. Pratt: I offer this in evidence. First, I want to ask if that check was issued in payment of this invoice, Exhibit——

Mr. Faulkner: We will stipulate it was. [2070]

Mr. Pratt: (continuing)——Exhibit 153. It is stipulated by counsel that it was so used.

Mr. Faulkner: Yes.

Mr. Pratt: And the check is offered in evidence.

The Court: Admitted and marked.

Mr. Faulkner: The general objection, your Honor, and exception to the ruling.

(Testimony of Leslie R. Kerdell.)

(The document was marked U. S. Exhibit 155 in evidence.)

Mr. Pratt: Q. Mr. Kerdell, this check, Exhibit 155, was paid out of what funds, if you know?

A. It was paid from the funds of the War Shipping——

Mr. Faulkner: We make the same objection as heretofore to this type of evidence to establish the fact of where the money came from.

The Court: Overruled.

Mr. Faulkner: Exception.

Mr. Pratt: Complete your answer, please, Mr. Kerdell.

A. It was paid from the funds of the War Shipping Administration, United States Government, entrusted to us in a revolving fund which we termed a special account.

Q. Do you have, yourself, contact with the revolving fund and with the receipt of funds from the Government in that connection? A. Yes.

Q. What is the amount of this fund which your company has from the Government?

A. At the present time it is $500,000. [2071]

Q. Is the fund maintained at that rate?

A. That is correct. We may revolve it at any time to bring it up to $500,000, and as many times as we desire.

Q. How it that done?

A. There is a calculation or an accounting made up which I certify to, and that we have a certain balance on a certain day and that we have made cer-

(Testimony of Leslie R. Kerdell.)

tain calculations and we have made certain expenditures and show a net balance, and then we put in a requisition for an amount to bring it up to the $500,000.

Q. In May of 1944, at the time this check was issued, was that situation in the same way that it is now?

A. It is, though I cannot testify as to the gross amount at that time, because the fund at one time was $300,000.

Q. During the period that this revolving fund has been available to your company, has it always had a balance in it of Government funds?

A. Always.

Q. Always. That is all.

Cross Examination

Mr. Faulkner: Q. Mr. Kerdell, the gentleman who would have in the regular course of business issued this purchase order dated May 10 was a party by the name of Granville?

A. J. J. Granville.

Q. This counterpart was part of the papers of the company that were made under your control as secretary-treasurer, is that right? A. Yes.

Q. Also, in the same file there was an invoice of the firm [2072] of Nye & Nissen, and I notice that there are some corrections in that invoice in which a pencil figure appears, or a notation that the correction had been O.K.'d by the vendor. Then there was some certificate, there are some certificates there

(Testimony of Leslie R. Kerdell.)

with a lot of writing on. Those are markings of your company, are they not, corrections?

A. Yes, the mathematical error was corrected.

Q. That's right, isn't it? In other words, there was $123.40 and it should have been something else—well, I can't figure it out. There was a 40-cent difference; isn't that right?

A. It was billed at $123.40 and should have been an even $123.

Q. The amount of the invoice which you have in your hand was $307.07, was it not?

A. That is correct, yes.

Q. After it had been corrected? A. Yes.

Q. Do you know whether part of your records consisted of a delivery tag from Nye & Nissen?

A. This, I would say, was the delivery tag.

Q. This is a photostatic copy.

Mr. Pratt: Beg pardon?

Mr. Faulkner: This is a photostatic copy of one.

Mr. Pratt: Of what, a delivery slip? I don't question it.

Mr. Faulkner: Well, I want to explain it to you, because you see you had an invoice there that is incorrectly added, but [2073] the actual delivery tag that accompanied the merchandise is correctly added.

Mr. Pratt: O.K.

Mr. Faulkner: Q. Do you know whether you had a delivery tag as part of your records that would be a counterpart of that, crossing out my handwriting at the top...

(Testimony of Leslie R. Kerdell.)

A. I couldn't say whether we have it in our records, or not.

Mr. Faulkner: I see.

Mr. Prat: If counsel says that that photostatic copy came from this company's records we would be very glad to concede it.

Mr. Faulkner: Yes. Well, there is no question of that.

Q. There is a man named Singleton who has done some writing on that. Is he an employee of yours?

A. He is a steward, he was the steward on the ship.

Q. His signature appears on that photostatic copy? A. Yes, it does.

Mr. Faulkner: We ask it be marked Defendants' Exhibit next in order for identification.

The Court: Admitted and marked.

Mr. Faulkner: And I would like the clerk to erase the writing on the top that I put on there, if he will.

(The document was marked Defendants' Exhibit AT for Identification.)

Mr. Faulkner: Now, Mr. Kerdell, you testified to the [2074] manner in which your company handled funds of the War Shipping Administration. Which count in the indictment covers the Deconhill?

Mr. Houck: 4, I believe. [2074-a]

Q. Are you familiar with the fact, Mr. Kerdell, that the rights and obligations of the company for

(Testimony of Leslie R. Kerdell.)

which you work are reduced to writing in a contract with the War Shipping Administration?

A. I didn't hear the question.

Q. The rights and obligations of your company are set forth in a contract in writing between your company and the War Shipping Administration, isn't that correct? A. That is right, yes.

Q. And each side is bound naturally by the terms of that contract, isn't that correct?

A. That is correct.

Q. Do you know Mr. J. J. Coney?

A. Yes, I do.

Q. And are you the L. R. Kerdell, a signator to that contract? It is typewritten, but it is certified by the Government as a copy. Is that right?

A. That is right, yes, sir.

Q. Will you show me in this contract the provisions relating to the supplying of money and the disbursing of money and the manner in which the fund is to be replenished?

The Court: Q. Have you located it?

The Witness: A. I have, your Honor.

The Court: You may read it to the Jury.

Mr. Faulkner: Q. Will you indicate where you are reading from?

A. Article 7, Page 3.

Q. Do you mind marking that? That will save Mr. Pratt and I some time. Just mark with a pencil where you are reading so we will know it has been read to the Jury. [2075]

The Court: Mark it so they will be able to

(Testimony of Leslie R. Kerdell.)

locate it after you get through. Now you may read to the Jury.

The Witness: "The United States shall reimburse the General Agent at stated intervals determined by the United States for all expenditures of very kind made by it in performing, procuring or supplying the services, facilities, stores, supplies or equipment as required hereunder, excepting general and administrative expense (as presently itemized in General Order No. 22 of the United States Maritime Commission.), advertising expense, taxes (other than sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses hereunder) and any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder. The General Agent shall be reimbursed for sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses hereunder if the General Agent shall have used due diligence to secure immunity from such taxation. To the extent not recovered from insurance, the United States shall also reimburse the General Agent for all crew expenditures (accruing during the terms hereof) in connection with the vessels [2076] hereunder including, without limitation, all disbursements for or on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, travel

(Testimony of Leslie R. Kordell.)

expense, loss of personal effects, maintenance, cure, vacation allowances, damages or compensation for death or personal injury or illness, and insurance premiums, required to be paid by law, custom, or by the terms of the ship's articles or labor agreements, or by action of the Maritime War Emergency Board, any payments paid by the General Agent to a pension fund in accordance with a pension plan in effect on the effective date of this agreement with respect to the officers and members of the crew of such vessels who are entitled to benefits under such plan, on the effective date of this agreement, for the amount of any social security taxes which the General Agent is or may be required to pay on behalf of the officers and crew of said vessels as agent or otherwise. The United States may disallow, in whole or in part, as it may deem appropriate, and deny reimbursement for, expenses which are found to have been made in wilful contravention of any outstanding instructions or which were clearly improvident or excessive.

"Any moneys advanced to bonded persons by the General Agent for the ship disbursements which are lost by reason of a casualty to the vessel on which the money so advanced [2077] is carried shall in event of such loss be considered an expense of the General Agent, subject to reimbursement as is in this article 7 provided".

The Court: Pardon me just a minute. Are we concerned here with anything other than the supplies to these ships?

(Testimony of Leslie R. Kerdell.)

Mr. Faulkner: No. I did not want to interrupt him, Judge.

The Court: Is there anything in relation to that?

Mr. Faulkner: There is one little paragraph remaining.

The Court: One little paragraph?

Mr. Faulkner: Yes.

The Witness: "The United States may advance moneys to the General Agent to provide for disbursements hereunder in accordance with such regulations or conditions as the United States may from time to time prescribe."

Mr. Faulkner: Q. Now, the fact is, Mr. Kerdell, what happened is this: under this agreement with relation to the servicing and supplying of these vessels you were established a general agent by the War Shipping Administration, isn't that correct? A. General Agent.

Q. Under that contract the Government could, as you just read, provide you with funds?

A. Yes, sir.

Q. And naturally you had to account for the funds? A. Yes, sir.

Q. But when as the General Agent of the War Shipping Administration you went out and bought supplies and merchandise and paid [2078] off crews, you paid the money either out of your own or the money that the Government gave you and you kept an account of it, didn't you?